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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,110	11/05/2001	Gustavo Palacio	16,422	7471
23556	7590	12/08/2006		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER COLE, ELIZABETH M	
			ART UNIT 1771	PAPER NUMBER

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/992,110

Applicant(s)

PALACIO ET AL.

Examiner

Elizabeth M. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-15 is/are allowed.
- 6) ☒ Claim(s) 16-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/16/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/16/06 has been entered.

2. Claims 16-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not provide support for the limitation that the material is substantially free of flocks.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 16-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Milding, WO 96/06222. Milding

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discloses nonwoven fabrics which comprise recycled fibers. The recycled fibers can have a length of 5-60 mm, (page 2, line 29). The recycled fibers can comprise natural and synthetic fibers. See page 3, lines 18-26. The recycled fibers are reclaimed from waste materials in the form of edge trimmings, start up waste and other unused as well as used textile structures. See page 3, lines 11-15. The waste textiles are cut up and subjected to shredding by spiked rollers to form the reclaimed fibers. See page 3, lines 19-21. The reclaimed fibers can then be combined with new fibers and formed into nonwoven webs by wet forming, foam forming, air laying or dry laying the fibers to form a web which can then be hydroentangled. See page 2, line 33-page 3, line 3. Milding differs from the claimed invention in that Milding does not disclose that the fibers have at least one irregular distortion generated by hydraulic fracture of the thread element to separate it from a bonded fibrous material while the bonded fibrous material is suspended in a liquid and does not describe the form of the distortions, (claim 21) or the surface area of the distorted fibers relative to the surface area of the fiber prior to its being reclaimed. However, Milding does describe a process for mechanically separating fibers having the claimed composition and length from textile waste by first cutting the material and then subjecting it to a spiked roller. Therefore, it is reasonable to presume that the fibers resulting from this treatment would have at least one distortion such a bend, a flattened segment or an expanded segment, due to the action of the spiked roller in separating the fibers. Due to the presence of the distortion the fiber would have a surface area which was greater than that of the fiber before it was separated. Support for these presumptions is found in the fact that Milding teaches

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employing the same size and types of fibers and subjecting them to mechanical stresses such as shredding with a spiked roller. With regard to the limitation that the recycled fiber and fiber-like material is substantially free of flock, Milding teaches that "the freeing of the fibers is often incomplete so that the recycled fibres can be present partly in the form of flocks" (emphasis added). This appears to teach that sometimes flock is present but not always. Therefore, Milding appears to teach two embodiments, one where flock is not substantially present and one where flock is present. Therefore, Milding continues to anticipate the claimed invention.

6. Claims 16-27 are rejected under 35 U.S.C. 103(a) as obvious over Milding, WO 96/06222 in view of Japanese Laid-Open Patent Publication Sho 49-31909. Milding discloses nonwoven fabrics which comprise recycled fibers. The recycled fibers can have a length of 5-60 mm, (page 2, line 29). The recycled fibers can comprise natural and synthetic fibers. See page 3, lines 18-26. The recycled fibers are reclaimed from waste materials in the form of edge trimmings, start up waste and other unused as well as used textile structures. See page 3, lines 11-15. The waste textiles are cut up and subjected to shredding by spiked rollers to form the reclaimed fibers. See page 3, lines 19-21. The reclaimed fibers can then be combined with new fibers and formed into nonwoven webs by wet forming, foam forming, air laying or dry laying the fibers to form a web which can then be hydroentangled. See page 2, line 33-page 3, line 3. Milding differs from the claimed invention in that Milding does not disclose that the fibers have at least one irregular distortion generated by hydraulic fracture of the thread element to separate it from a bonded fibrous material while the bonded fibrous material is

suspended in a liquid and does not describe the form of the distortions, (claim 21) or the surface area of the distorted fibers relative to the surface area of the fiber prior to its being reclaimed. However, Milding does describe a process for mechanically separating fibers having the claimed composition and length from textile waste by first cutting the material and then subjecting it to a spiked roller. Therefore, it is reasonable to presume that the fibers resulting from this treatment would have at least one distortion such a bend, a flattened segment or an expanded segment, due to the action of the spiked roller in separating the fibers. Due to the presence of the distortion the fiber would have a surface area which was greater than that of the fiber before it was separated. Support for these presumptions is found in the fact that Milding teaches employing the same size and types of fibers and subjecting them to mechanical stresses such as shredding with a spiked roller. Milding differs from the claimed invention because Milding teaches that flock may sometimes be present, (see page 4, lines 20-35) and that the flock can have both positive and negative effects on the finished product. JP '909 teaches that in forming nonwovens from recycled fibers that when flocks are not desired that they can be removed through an additional process wherein the fibers are further separated from each other before incorporating the recycled fibers into the nonwoven material. Therefore, it would have been obvious to one of ordinary skill in the art to have performed the further separation step taught in JP '909, motivated by the expectation that this was an alternative known method of dealing with problems which can be caused by flocks in a nonwoven material comprising recycled fibers.

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7. The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c)

because:

The disclaimer fee of \$130 in accordance with 37 CFR 1.20(d) has not been submitted, nor is there any authorization in the application file to charge a specified Deposit Account or credit card.

The fee was paid for one of the two disclaimers, therefore one disclaimer is proper and the other is not proper.

8. Claims 1-15 are allowed in view of the Board Decision dated 9/28/05.

9. Applicant's arguments filed 10/10/06 have been fully considered but they are not persuasive. Applicant argues that Milding does not teach a material that is substantially free of flocks and instead teaches that flocks are present and that they provide positive benefits to the material. However, Milding does not assert that flocks are always present, but instead states that flocks "can be" present "often", which also indicates that there are situations in which flocks are not present. Further, Milding teaches that the flock can have both positive and negative effects on the finished product. Therefore, Milding does teach embodiments where flock is not present and therefore the 102/103 rejection is maintained. Further, since Milding does teach that sometimes having the flock present has a negative effect on the finished product, a new rejection is set forth employing JP '909 which teaches a method to remove undesired flocks from a recycled fibrous material.

10. Applicant argues that the process of Milding cannot produce fibers having the claimed distortions. However, Applicant has not presented evidence to show that the

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fibers of Milding would not have the claimed distortions. Arguments cannot take the place of evidence.

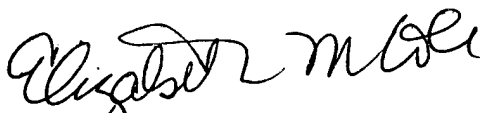
11. Applicant argues that the claimed process is very stringent and aggressive and if it were used on the fibers of Milding the fibers would very likely melt. However, the rejection does not state that it would have been obvious to have used the claimed process to make the recycled product of Milding, but instead states that it appears that the fibers of Milding would also have a distortion such as a bend, flattened segment or expanded segment, even though the process by which this distortion is formed is different. Applicant has not shown that the distortions in the claimed fibers are different from the distortions in the Milding fibers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

  
Elizabeth M. Cole  
Primary Examiner